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**MAY, Judge**

Black Cowboys operated a saddle barn concession at Fort Harrison State Park under a license from the Department of Natural Resources (“DNR”). Black Cowboys brought a breach of contract action against DNR after DNR terminated the concession. The trial court denied Black Cowboys’ motion for summary judgment and granted DNR’s motion. We affirm.

### **FACTS<sup>1</sup> AND PROCEDURAL HISTORY**

Black Cowboys entered into a contract with DNR to operate the saddle barn concession at Fort Harrison State Park. A DNR saddle barn inspector received complaints the saddle barn was using lame horses for trail rides. She visited the saddle barn and found some of the horses were underweight. She also found a horse with a deep saddle sore and one with bloody legs from fly bites. On a subsequent visit she again noted some horses appeared to be underweight. After that visit DNR received five more complaints concerning thin horses and an absence of food in the pasture or hitching area.

After receiving another complaint, this time from the Indiana Hooved Animal Society, the DNR inspector asked a veterinarian to visit the saddle barn. His report stated all but two of the horses and three of the ponies were in poor body condition. Most had fungal skin infections. There was not enough bedding in the stalls, and it was wet. Some horses were eating the bedding because there was no hay or grain in the stalls. One horse

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<sup>1</sup> These facts are extracted from those found by the United States District Court for the Southern District of Indiana. Black Cowboys brought its complaint in the Marion Superior Court. It was removed to the federal court, where DNR obtained summary judgment on the federal claims. The district court remanded the breach of contract claim to the Marion Superior Court, where DNR was granted the summary judgment that is before us on appeal.

was lame and another had an infected wound. The veterinarian opined the horses were “nutritionally neglected and should be removed from the care of the current owner(s) as soon as possible so that appropriate nutrition, deworming, and other necessary medical treatments can be provided.” (App. at 157.) DNR gave Black Cowboys a termination letter the following day.

### **DISCUSSION AND DECISION**

The standard of review of a summary judgment ruling is the same as that used in the trial court: summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Row v. Holt*, 864 N.E.2d 1011, 1013 (Ind. 2007). Generally, the construction of a written contract is a question of law for the trial court for which summary judgment is particularly appropriate. *Perryman v. Motorist Mut. Ins. Co.*, 846 N.E.2d 683, 687 (Ind. Ct. App. 2006). That the parties made cross-motions for summary judgment does not alter our standard of review. *Dreibelbiss Title Co., Inc. v. Fifth Third Bank*, 806 N.E.2d 345, 348 (Ind. Ct. App. 2004), *trans. denied* 822 N.E.2d 978 (Ind. 2004). We consider each motion separately to determine whether the moving party is entitled to judgment as a matter of law. *Id.* If the summary judgment can be sustained on any theory or basis in the record, we must affirm. *Ebersol v. Mishler*, 775 N.E.2d 373, 378 (Ind. Ct. App. 2002), *trans. denied* 792 N.E.2d 39 (Ind. 2003).

DNR could properly terminate its contract with Black Cowboys based on the complaints it had received from the public. The license agreement permits DNR to immediately terminate the agreement “where continued operation by the Licensee may

result in significant or irreparable harm to the Department and/or the public.” (App. at 51.) “[S]ignificant or irreparable harm to the Department and/or the public” includes “circumstances which [sic] would cause harm to the public or the Department or reflect adversely on the Department.” (*Id.*) As the record provides this basis for sustaining the summary judgment for DNR, we must do so. *See Ebersol*, 775 N.E.2d at 378.

Black Cowboys argues DNR breached the agreement when it terminated the contract without giving Black Cowboys notice and an opportunity to cure. In its letter to Black Cowboys terminating the contract, DNR noted “Paragraph 17 of your contract requires the proper and humane treatment of horses and permits termination of the contract.” (App. at 131.) DNR gave Black Cowboys no other reason for the termination.

The contract provides a licensee is to be given a notice of violation stating which provision has been violated and a date by which the stated violation must be corrected. But that provision addresses liquidated damages for violations not corrected in a specified period, not termination of the agreement. The agreement says “the system of progressive liquidated damages is supplemental to and not in lieu of the Licensee performing according to the License provisions,” and explicitly provides DNR may terminate the agreement immediately for violations that “reflect adversely on the Department.” (*Id.* at 247.)

The undisputed evidence of complaints about the condition of the horses while Black Cowboys operated the saddle barn supports a determination Black Cowboys’ operation of the saddle barn “reflect[ed] adversely on the Department” and summary judgment for DNR was therefore not error.

Affirmed.

VAIDIK, J., and MATHIAS, J., concur.